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ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. RICHARD E GORDON

CASE NO. C20131650

DATE: September 30, 2016

TIFFANY BREDFELDT and
PHILLIP BREDFELDT
Plaintiffs

VS.

TODD GREENE
Defendant

R U L I N G

IN CHAMBERS

In this case, Plaintiffs Tiffany and Phillip Bredfeldt seek contempt sanctions against Defendant Todd Greene ("Greene") for violating a 2013 permanent injunction issued by the Hon. Carmine Cornelio against Greene connected to charges of harassment. Pending before the Court is Greene's June 15, 2016, Motion to Dissolve. Following briefing, the Court held a hearing on July 15, 2016, with supplemental briefing being completed on August 4, 2016. The Court has carefully considered the parties' memoranda and has reviewed the recording of the May 20, 2013, evidentiary hearing which forms the basis of the injunction at issue. *See In re Sabino R.*, 198 Ariz. 424, 425, ¶ 4, 10 P.3d 1211, 1212 (App. 2000). The Court will deny the Motion to Dissolve, but will clarify portions of the injunction to which Greene has specific objections.

I. <u>Background</u>

In 2005 Tiffany Bredfeldt ("Tiffany") and Greene met while Tiffany was boarding her horse near Greene's home. Any friendship between them soon soured. In early 2006, Tiffany secured an *ex parte* injunction against harassment ("IAH") against Greene. Greene has steadfastly maintained that the IAH was improper. Greene unsuccessfully challenged the IAH at a contested hearing (CV06-006424) and he also

Mary Dimond
Judicial Administrative Assistant

unsuccessfully challenged it on an appeal before the Superior Court (C20064172). Greene thereafter filed a lawsuit against Tiffany (C20105076) connected to the IAH, which was dismissed on August 25, 2010.

On March 27, 2013, Plaintiffs filed a lawsuit alleging that Greene "set on an intentional course of conduct since 2006 to constantly defame Plaintiff Tiffany and cause her emotional distress" and "to have Plaintiff terminated from her employment, lose her credentials, be blacklisted in her profession, and have her marriage to [her husband] fail." Plaintiffs' Complaint listed numerous examples, including sending a highly disparaging letter about Tiffany to the Inspector General of the United States Health and Human Services and an [i]nternet posting with a "concocted article" referring to Tiffany's vagina. According to the Complaint, the "harassments and defamations occur[ed] on a weekly basis" and were directed at "the world at large as well as Plaintiff Tiffany's colleagues, friends, employers, former professors, and the scientific community." Plaintiffs also alleged that Greene had contacted others including the Presbyterian Church of America, the National Association of Evangelicals, clergy, and family. The publications, according to the Complaint, were by "personal communications, letters, emails, and ever updated websites regarding Plaintiff Tiffany." Plaintiffs did not seek money damages but, rather, a preliminary and permanent injunction to have Greene stop his harassing behavior. (March 27, 2013, Complaint at ¶¶ 4, 9, 10, 11.)

On May 9, 2013, Greene filed an Answer and Counterclaim (spanning 100 paragraphs) with lengthy exhibits. (The Counterclaim was dismissed on July 22, 2013.) Greene described, from his perspective, what had taken in place in 2005 and 2006. He alleged that Tiffany had illicitly led him to believe that she was not married and that she was interested in a relationship with him. In addition to claiming that his speech was protected by the First Amendment, Greene argued – in essence – that his behavior was justified because Tiffany had improperly secured the IAH based on contrived facts. According to Greene, "'defamation back' is not actionable" and his blog had "rehabilitated his image." (May 9, 2013, Answer at ¶¶ 12-17, 53-55.)

Mary Dimond
Judicial Administrative Assistant

On May 20, 2013, Judge Cornelio held an evidentiary hearing on Plaintiffs' request for a preliminary injunction. Greene declined Judge Cornelio's invitation to have an expedited trial on the merits and, as a result, the matter proceeded only on the preliminary injunction.

In addition to Tiffany and Greene, two other witnesses, Dr. Michael Honeycutt (Tiffany's employer) and Jennifer Terpstra (a former friend of Tiffany), all testified. The Court made the following findings:

> 1. Both plaintiffs are not public figures, they are only employees of the state.
>
> 2. As a result of the prior orders of the Court, [i]njunctions, appeals from those injunctions, dismissals of lawsuits, etc., the issues the defendant is now trying to raise in terms of some of the allegations or statements as to plaintiff Tiffany Bredfeldt are res judicata in her favor and are now the types of allegations that become on their face, defamatory. Worse than that, it is the tone, tenor, and scope of the defendant[']s publication and reaching out to, unnecessarily, and for no other purpose, but to harm or destroy both plaintiffs. There is no need or reason, other than vindictiveness and vengeance to contact Dr. Honeycutt, an employer of the plaintiff Tiffany Bredfeldt is currently working with. If the defendant was publishing some of the information, or even most of what the defendant has published for purposes of having a free and open discussion regarding the nature of injunctions against harassment and judges' rulings, the nature of injunctions against harassment and orders of protections and judges' proclivities and judges' tendency to be paternalistic rather than anything else, the Court would not be considering granting the temporary restraining order or the preliminary order to remove items off the Internet. They are, however much more.
>
> 3. The Court believes the defendant in his mind is well intentioned and controlled. He has to understand that unfortunately the defendant presents himself to the public and to a judge, such as this Court, is something beyond just well intentioned and controlled. The defendant is presenting himself to the Court, and the evidence substantiates that, as he is an angry young man who is trying to get back at someone who caused him harm in 2006, and as a result of that, is reaching out and contacting plaintiff Tiffany Bredfeldt's employers, employees, family, friends and people that do not have anything to do with her. This has nothing to do with defendant's real open and fair first amendment rights to discuss what orders of protection and injunctions against harassment are, and instead, purposefully characterizing the plaintiff in a false and vicious light.
>
> 4. The Court agrees with the defendant that Mr. Marks has "cherry picked" the items presented to the Court from the defendant's website, but he had no option but to do so from the abundance of information and statements by the defendant on the [i]nternet. Some of the defendant's statements as to plaintiff Tiffany

> Bredfeldt are false and many of them invade her privacy and the defendant's conduct invade[s] the plaintiff's privacy.

The Court also found that Tiffany had "no other effective remedy but to have [Greene] cease and desist from making publications regarding her and her family." The Court granted the preliminary injunction and ordered in pertinent part:

> 2. The defendant is ordered and enjoined from having direct communications, or initiating any direct communications with any of the plaintiffs' employees, employers, or family members.
>
> 3. The defendant shall immediately remove from his website, images of the plaintiffs. The defendant is given the opportunity to show the Court how to fashion an order and solve the problem as the Court does not want to issue an order requiring the defendant to remove significant portions of his website or blog or order it removed in its entirety. This Court will issue future orders that require him to remove, replace, filter or change the website as he is characterizing the plaintiffs in a false light, invades their privacy or is defamatory. This includes, but is not limited to referring to her as a perjurer, skank, dishonest, etc. The Court is also troubled by the amount of "tags" and personal connection of the plaintiffs to many of the "tags". The Court finds the "tags" used by the defendant has been done for purposes of retaliation, vindictiveness or vengeance.
>
> 6. The defendant shall immediately cease and desist all future publications on his website or otherwise.
>
> 8. Until that time, the defendant, shall not make additional publications, oral, written, web based or other communications/publications, regarding the plaintiffs to colleagues, national organizations, family members, employees, employers, regarding the Injunction Against Harassment, the appeal and the history surrounding the Injunction Against Harassment, the factual and contested factual basis and plaintiff Tiffany Bredfeldt's testimony from this date forward, including reference or inference to the defendant's own case until further order of the Court.

(May 20, 2013, Minute Entry.)

On August 2, 2013, Greene filed a "Notice of Compliance" connected to the May 20, 2013, injunction in which he stated:

> Defendant has brought his blog into compliance with the expectations prescribed by this Court's May 20, 2013 ruling. Posts and pages that contained details of events or persons related to the matter before this Court have either been removed

> entirely or revised to exclude references to or likenesses of Plaintiffs and their associates. Most revised posts have besides been retitled and published afresh with different URLs (Internet locations).
>
> Defendant, now identified as "Moderator," has also removed his own last name from the blog and effectively rendered it anonymous. Names that remain are exclusively those of people who have voluntarily submitted comments to the blog and those of cultural icons, scholars, writers, and other public figures who have no relationship either to or with Plaintiffs. Per the Court's order, all nominal tags have also been purged.
>
> Lingering Internet traces of expunged material, which Defendant has no control over, lead to "Not Found" and will extinguish in time, their links having been permanently severed. Defendant has furthermore notified Google, the predominant search engine, of the deletion of various pages and posts and will otherwise do what he can to expedite removal of vestiges of expunged matter.
>
> Defendant respectfully asks that the Court seek independent confirmation of any contradictory claims made by Plaintiffs prior to forming a ruling based on such claims.
>
> Defendant's blog represents an investment of thousands of hours of his time over a two-year period, much of which has been dedicated to providing what succor he can to members of the public in very evident distress. Defendant has explicitly identified himself as a writer and not an attorney.
>
> Remaining contents of the blog concern topics of interest to those who have submitted public comments to the blog or private anecdotes to its author, or who have been led to the blog by search engine queries. Defendant has redacted the names of opposing parties even from the text of comments submitted by the blog's respondents respecting their own cases.

On September 9, 2013, in light of Greene's compliance, Judge Cornelio found that further litigation was unnecessary and *sua sponte* converted the temporary injunction into a permanent one. Judge Cornelio, however, gave the parties an opportunity to object. On September 25, 2013, Greene objected to Judge Cornelio's order. On October 9, 2013, Judge Cornelio rejected Greene's objection and entered final judgment on the permanent injunction pursuant to Ariz. R. Civ. P. 54(b). Greene filed a Notice of Appeal, but did not follow through with the appeal process.

Mary Dimond
Judicial Administrative Assistant

II. Discussion

A. Motion to Dissolve

Greene, by way of a Motion to Dissolve brought pursuant to Ariz. R. Civ. P. 65(c), seeks to vacate or limit paragraphs 2, 3, 6, and 8 of the permanent injunction issued by Judge Cornelio. Greene argues that certain substantive provisions of the permanent injunction violate his First Amendment rights. But Greene presented a host of First Amendment defenses in the 2013 proceeding, which Judge Cornelio explicitly rejected. (May 9, 2013, Answer at ¶¶ 4, 55-67; May 20, 2013, Injunction at pg. 3, ¶¶ 2-3.) The ruling became a final judgment on October 9, 2013, and Greene did not challenge it on appeal.

The Court disagrees with Greene that Ariz. R. Civ. P. 65(c) provides the blanket authority which would allow the relief sought here. This rule explicitly applies to temporary injunctions, not permanent injunctions. The Court nonetheless possess some equitable authority to prospectively modify an otherwise permanent injunction based on "'subsequent changed circumstances [making] its application [] no longer equitable.'" *State ex rel. Corbin v. Portland Cement Ass'n,* 142 Ariz. 421, 425, 690 P.2d 140, 144 (App. 1984) (citation omitted). The injunction, however, still would be "res judicata as to the circumstances which existed at the time of the making of the decree." *Id.* (citation omitted). The Court, in other words, has the power to "'modify or vacate as exigencies arising since its rendition may require.'" *Id.* (citation omitted).

Here, no changed circumstances or exigencies are presented which would make ongoing enforcement of the 2013 injunction inequitable or unfair. Surely Plaintiffs' attempt to enforce the injunction by way of contempt is not a changed circumstance allowing the Court to invoke its equitable powers. If this were true, any party to a final and permanent injunction could collaterally challenge it simply by flouting its requirements and inviting a contempt proceeding. This is not allowed under Arizona law. *See State v. Chavez,* 123 Ariz. 538, 539-43, 601 P.2d 301, 302-06 (App. 1979) (holding that an injunction must be followed, even if erroneous, until it is reversed); *see also Walker v. City of Birmingham*, 388 U.S. 307, 318-21 (1967).

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Judicial Administrative Assistant

In a related argument, Plaintiffs assert that collateral estoppel (also known as "issue preclusion") prevents the changes to the injunction which Greene seeks here. (Response at 6.) The doctrine of issue preclusion might apply if the First Amendment was a valid defense to the current contempt proceeding given that Greene asserted a First Amendment defense in 2013. *See Airfreight Exp. Ltd v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, 108, ¶ 14, 158 P.3d 232, 237 (App. 2007) (issue preclusion applies to affirmative defenses). Greene's First Amendment arguments, however, do not provide a defense to the unchallenged and permanent injunction which was final years ago. *See Chavez, supra; Walker supra.* The Court, therefore, need not resolve whether and how collateral estoppel might apply.

B. Greene's Constitutional Objections

Notwithstanding the Court's unwillingness to dissolve the permanent injunction, the Court believes it is appropriate to construe the injunction in light of Greene's specific objections and the parties' arguments. The ongoing contempt proceedings in fact necessitate an understanding of the scope of the injunction so that any breach can properly be assessed. The Court will assume that Judge Cornelio understood and followed the law, including controlling First Amendment principles. *In re William L.*, 211 Ariz. 236, 238, ¶ 7, 119 P.3d 1039, 1041 (App. 2005) ("trial judges are presumed to know the law and apply it correctly in making their decisions").

As a starting point, the Court acknowledges that the permanent injunction at issue is a prior restraint for First Amendment purposes. *See Alexander v. United States*, 509 U.S. 544, 550 (1993). "[A]ny prior restraint on expression comes . . . with a 'heavy presumption' against its constitutional validity." *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). A content-neutral injunction may "burden no more speech than necessary to serve a significant government interest." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994). A content-based restriction must "further[] a compelling interest and [be] narrowly tailored to achieve that interest." *Reed v. Town of Gilbert, Ariz.*, __ U.S. __, 135 S. Ct. 2218, 2231 (2015). Despite these

limitations, defamation historically is considered unprotected by the First Amendment, *see e.g., Beauharnais v. People of State of Ill*., 343 U.S. 250, 266 (1952), and where (as here) the subject is not a public figure and the speech is not of public concern, speech may be regulated under the common law, *see Dombey v. Phoenix Newspapers, Inc.*, 150 Ariz. 476, 481, 724 P.2d 562, 567 (1986). With these principles in mind, the Court turns to Greene's objections.

Greene first objects to paragraph 2 which, although he concedes is content-neutral, argues is overbroad because it potentially reaches speech concerning public affairs.[1] (Motion at 4-5; Reply at 4; Defendant's Supplement at 4.) There is no reason, given this record, for Greene to have any direct contact with Plaintiffs, their friends, their acquaintances, or their family, and Greene does not argue otherwise. *See Snyder v. Phelps*, 562 U.S. 443, 455 (2011) (finding the speech involved public concern, noting that "[t]here was no pre-existing relationship or conflict between [the parties] that might suggest [the] speech on public matters was intended to mask an attack on [the victim] over a private matter"). Judge Cornelio already has determined that Greene's intent vis-à-vis his contact with the Texas officials regarding Tiffany had nothing to do with free speech but, instead, was to exact vengeance and to harass; harassing conduct is not protected by the First Amendment. *See State v. Brown*, 207 Ariz. 231, 234, ¶ 8, 85 P.3d 109, 112 (App. 2004).

The Court, moreover, does not construe paragraph 2 as enjoining Greene from contacting Texas officials in the unlikely event he needs to address issues within their sphere of public duties. *See, e.g., Gullickson v. Kline*, 678 N.W.2d 138, 143 (N.D. 2004) (noting concern about a restraining order that effectively barred a resident from going to city council). So construed, the restriction is narrowly tailored to prevent the important need of ameliorating the highly personal and harmful harassment of Plaintiffs.

[1] Defendant in his Reply argues for the first time paragraphs 2 and 6 are content-based restrictions and also complains about paragraph 4 (although this may be a typographical error). (Reply at 2, 3.) The Court will not consider arguments raised for the first time in a reply brief. Ariz. R. Civ. P. 7.1(a).

Mary Dimond
Judicial Administrative Assistant

Greene next objects to paragraph 3 because he believes that his posting photographs of Tiffany was innocuous, non-commercial, and did not violate copyright law. (Motion at 6.) This objection does not make sense and is not based on the First Amendment, at least not obviously.

Greene also objects to paragraph 6 claiming that it disallows him from "speaking – at all," as well as to paragraph 8 (and generally others paragraphs) because he is constitutionally allowed to express his personal opinions. (Motion at 6.) Greene, of course, is allowed to speak. But he is not allowed to publish (via his blog/website or otherwise) the specific statements about Tiffany which Judge Cornelio already has determined to be private, defamatory, or otherwise tortious, even if they are Greene's opinions. *See Balboa Island Vill. Inn, Inc. v. Lemen*, 156 P.3d 339, 349 (Cal. 2007) (holding that court may enjoin speech judicially determined to be defamatory); *see also Childs v. Ballou*, 2016 ME 142, __ A.3d ___, 2016 WL 4760902 (Sept. 13, 2016). ("'[c]ourts have held that if past conduct has already been adjudicated illegal, tortious, or otherwise lacking in constitutional protection, then future conduct constitutionally may be enjoined'").

Finally, Greene also claims that paragraphs 6 and 8 potentially extend to "all First Amendment activity." (Reply at 3-4.) Judge Cornelio's written order, when considered in light of the May 20, 2013, recorded hearing, does not support the sweeping interpretation adopted by Greene. These paragraphs can fairly be characterized as enjoining Greene from directing his harassment, even harassment cloaked as a critique of the IAH process, specifically to Plaintiffs, their family, colleagues, and acquaintances through a host of resourceful means including, but not limited to, emails and extensive "tagging" to his blog/website. Again, construed in this way, the restriction is narrowly tailored to prevent the important need of ameliorating the highly personal and harmful harassment of Plaintiffs by Greene. *Cf. Com. v. Johnson*, 470 Mass. 300, 309, 21 N.E.3d 937, 946 (2014) (in case where harassment included internet postings and purposeful involvement of third parties, holding that "[w]here the sole purpose of the defendants' speech was to further their endeavor to intentionally harass [victim], such speech is not protected by the First Amendment").

Mary Dimond
Judicial Administrative Assistant

Judge Cornelio's permanent injunction contemplated Greene continuing his blog/website, as well as allowing him an unfettered discussion regarding the propriety of protective orders. But the injunction was designed to enjoin Greene's tortious behavior as it relates to Plaintiffs. At the upcoming hearing, the precise contours of the permanent injunction will be examined in light of Greene's conduct to assess whether he was contemptuous and, if so, what sanctions are appropriate.

III. Conclusion

Accordingly,

IT IS ORDERED DENYING Defendant Todd Greene's June 15, 2016, Motion to Dissolve as set forth herein.

IT IS FURTHER ORDERED setting this case for a status conference on **November 21, 2016, at 11:00 a.m.** as to the pending contempt proceedings.

IT IS FURTHER ORDERED DENYING all other pending requests connected to the Motion to Dissolve.

IT IS FURTHER ORDERED that the Court's Judicial Assistant email a copy of this order to counsel.√med

cc: Christopher L. Scileppi, Esq.
Jacob M. Amaru, Esq.
Kent F. Davis, Esq.

Mary Dimond
Judicial Administrative Assistant

Clerk of Court - Under Advisement Clerk

Mary Dimond
Judicial Administrative Assistant